

REMARKS/ARGUMENTS

The rejection presented in the Office action dated December 9, 2009 (hereinafter Office action), has been considered. Reconsideration of the pending claims and allowance of the application in view of the present response is respectfully requested.

Applicant appreciates the indication of allowability for claims 4, 5, 12, 13, 20, and 21.

Consistent with the indication of allowability for claims 4, 12, and 20, the independent claims have been amended to include allowable subject matter. The pending claims have been further amended to provide consistent claim language and antecedent basis for the changes made to the independent claims. Neither of the asserted references has been shown to teach or suggest that a device performing data streaming communication with a server generates a transmission suspension message for the server on the basis of a first mode change received via the device's user interface, as claimed in each of the independent claims. While the Office action suggests that U.S. Publication No. 2008/0287110 by Griffin (hereinafter "Griffin") teaches discontinuing data download upon initiation of a telephone call (*e.g.*, paragraph [0033]), in Griffin the central station 26 is the device that discontinues the data download, not the device initiating the telephone call/receiving the first mode change (mobile cellular communications devices 21, 22). Neither U.S. Patent No. 7,031,746 to Na *et al.* (hereinafter "Na") nor Griffin has been shown to teach or suggest a device that corresponds to the claimed invention.

In addition, Applicant maintains that Na fails to teach at least generating a transmission suspension message for a server on the basis of a first mode change command, as claimed in each of the independent claims. Instead, Na teaches that when a voice call request is detected, reception of the multimedia broadcast is continued, but the decoding of the audio signal of the received multimedia broadcast is discontinued for the duration of the voice call (Figs. 2, 3, 4, 5, blocks 221, 315, 431, 519). While the receiving device discontinues decoding the audio signal of the received broadcast, the broadcast signal is still received and the video portion is viewed during the voice call (*e.g.*, Col. 1, line 59 – Col. 2, line 10 and Col. 8, lines 54-63). Thus, in direct contrast to the claimed invention, Na

continues to receive and process the digital multimedia broadcast despite a voice call being accepted/initiated (asserted as corresponding to the claimed first mode change command generated by the user). Moreover, Na is directed to operations internal to the mobile terminal and does not suggest sending a message to a server, as claimed. Since Griffin's server has not been shown to be external to the network infrastructure (paragraph [0027]) and Na fails to teach or suggest communication with a server, as claimed, any combination of the teachings of Na with those of Griffin would not correspond to such limitations. Thus, the § 103(a) rejection cannot be maintained. Applicant accordingly requests that the rejection be withdrawn.

Dependent claims 3-8, 11-16, 19-24, 26, and 27 depend from independent claims 1, 9, and 17, respectively. Each of these dependent claims also stands rejected under 35 U.S.C. § 103(a) as being unpatentable over the above-discussed combination of Na and Griffin. While Applicant does not acquiesce to any particular rejections to these dependent claims, including any assertions concerning descriptive material, obvious design choice and/or what may be otherwise well-known in the art, these rejections are moot in view of the remarks made in connection with the independent claims above. These dependent claims include all of the limitations of their respective base claims and any intervening claims and recite additional features which further distinguish these claims from the cited references. "If an independent claim is nonobvious under 35 U.S.C. § 103, then any claim depending therefrom is nonobvious." MPEP § 2143.03; *citing In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988). Therefore, dependent claims 3-8, 11-16, 19-24, 26, and 27 are also patentable over the asserted combination of Na and Griffin.

Although there is a separate statement of rejection for claim 17 set forth at page ten, it appears that claim 17 is rejected in view of Na and Griffin on the same grounds as presented for the rest of the pending claims. Therefore, claim 17 is believed to be patentable for the reasons set forth above and the apparent rejection set forth at page ten does not require additional discussion. If Applicant's understanding is incorrect, Applicant requests further clarification and an opportunity to respond.

Moreover, Applicant traverses the § 103(a) rejection because the asserted modification of Na would improperly undermine the teachings of Na. If a proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification. *In re Gordon*, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984); MPEP § 2143.01(V). As explained above, Na is directed to a device that receives a multimedia broadcast during the existence of a voice call to allow a user to continue to view the broadcast video/text while taking the voice call. Modifying the device of Na to instead suspend the multimedia broadcast would directly undermine the objective of allowing Na's user to view the broadcast while taking/making a voice call. Since the asserted modification undermines the objective of Na, such a modification cannot support the § 103(a) rejections. Applicant accordingly requests that each of the § 103(a) rejections be withdrawn.

It should be noted that Applicant does not acquiesce to the Examiner's statements or conclusions concerning what would have been obvious to one of ordinary skill in the art, obvious design choices, non-functional limitations, intended use, common knowledge at the time of Applicant's invention, officially noticed facts, and the like. Applicant reserves the right to address in detail the Examiner's characterizations, conclusions, and rejections in future prosecution.

New claim 29 has also been added. Claim 29 largely corresponds to the subject matter of allowable claims 5, 13, and 21; therefore, the new claim does not introduce new matter and is believed to also be allowable over the asserted references for the reasons set forth in the Office action for claims 5, 13, and 21.

Authorization is given to charge Deposit Account No. 50-3581 (KOLS.101PA) any necessary fees for this filing. If the Examiner believes it necessary or helpful, the undersigned attorney of record invites the Examiner to contact the undersigned attorney to discuss any issues related to this case.

Respectfully submitted,

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